

FEARS MITIGATION PHASE TRANSCRIPT SUMMARY

STATE'S MOTION TO COMPEL PRODUCTION OF SMALLDON'S NOTES AND TO COMPEL SMALLDON TO WRITE A REPORT Vol. 12, start p. 2508, end p. 2514 -- also, State's motion for jury instruction under new case of *State v. Williams* – about limited scope of victim induced or facilitated the offense p. 2514-2515 (not resolved) – request denied p. 2518

Discussion about **merger of counts** and jury instructions to reflect that Vol. 12 p. 2522-2523

STATE'S OPENING STATEMENT start p. 2524, end p. 2529

DEFENSE OPENING STATEMENT start p. Vol. 12 p. 2529, end p. 2533

STATE'S Evidence readmitted p. 2533- 2534 State rests p. 2534

Defense Witnesses (Basic idea: dad a no good drunk who beat mom and the kids, after dad took off, mom working 2nd shift – kids ran wild- Fears broke juvenile probation and went to a Hamilton County juvenile treatment facility, more problems and went to DYS twice, adult record misdemeanor assault, drug dealer by profession)

VENUSTIEN FEARS start p. 2534, end p.2564 Fears' mother p. 2535

LaTonya Clark start p. 2564, end p. 2596- Fears sister p. 2564

State's notice that it may call neuropsychologist Robert Terine as possible rebuttal to Dr. Smalldon P. 2598-

Brian Anten start p. 2602, end p. 2615 attorney in private practice p. 2602

Angelo Dean start Vol. 12 p. 2615, end p. 2655 social worker for Hamilton County juvenile Court Vol. 12, page 2616 sidebar argument about Fears' social summary from juvenile court file p. 2647- 2653 , marked as State's exhibit 1-M p. 2653 – rhetorical question about any other of Dean's clients going on to be murderers, motion for mistrial overruled p. 2654-2655

James Fears start p. 2656, end p. 2682 brother of defendant p. 2656

Mae Fears start p. 2683, end p.2707 wife of Angelo's father James Fears p. 2683

Gail Benton Vol. 13, start p. 2715, end p. 2735 Angelo's aunt p. 2716

JEFFREY SMALLDON Vol. 13, start page 2736, end p. 2908 Ph. D clinical psychology, Ohio St. University 1989 p. 2736-2738 refers on direct examination to Fears being in DYS p. 2771 Smalldon says he reviewed DYS records p. 2789 Smalldon says he's reviewed a lot of records, "Angelo has an excellent attitude, etc." p. 2790 Fears has a **full scale IQ of 75**, below 70 starts mild mental retardation p. 2792-2793 Sidebar argument plus voir dire of Smalldon p. 2798- 2824 Court concludes that Smalldon/defense have substantially complied with Court's order about turnover of data; Smalldon's notes are "work product" and won't be turned over p. 2821 **DIAGNOSIS** p. 2825-2830 alcohol dependence, low-grade depression, personality disorder not otherwise specified, with features of antisocial and narcissism **cross** Smalldon relates Fears version of the killing – the other gun (Steve Franklin's) accidentally went off, Fears didn't know until after he left that somebody got shot p. 2854-2855.

Fears unsworn statement start p. 2909, end p. 2911.

Defense rests, Smalldon's file marked as State's exhibit 2-M

State's closing argument start Vol. 13, p. 2917, end p. 2937

Defense closing argument start p. 2937 , end p. 2950

State's Reply Argument start p. 2950, end p. 2971

Jury Instructions Vol. 13, start p. 2972, end p. 2987 jury instructions refer to 3 aggravating factors: 1) agg. murder in the course of kidnapping – principal offender/prior calculation and design; 2) agg murder in the course of agg robbery- prin. offender/prior calc & design; 3) agg murder in the course of agg burglary – prin. offender/prior calc. & design p. 2977-2978; reference to merger p. 2978

"Mitigating factors include but are not limited to the nature and circumstances of the offense and the history, character and background of the defendant and all of the following:" p. 2978

- 1) offender under duress/coercion
 - 2) mental disease or defect ;
 - 3) youth of the offender;
 - 4) any other factor
- p. 2978-2979

Jury Deliberations and Verdict commenced deliberations at 5:51 PM Vol. 13, p. 2989, jury broke for lunch at 1:15 PM , due back by 2:30 PM, verdict (time not given) jury polled Court says "I understand the jury has some questions they would like to ask with the attorneys and the Court" Vol. 14, p. 2995 Q & A between some jurors and the court and counsel, start p.2998, end p. topic is Smalldon p. 3022- 3026 reference to weak background of Smalldon p. 3029- 3030

Sentencing hearing Vol. 14, start p. 3032, end p. 3039, merger done p. 3036 - 3037